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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,616	10/19/2006	Nathalie Bergeret	0549-1018	5414
<small>465</small> YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			<small>7590</small> EXAMINER BODAWALA, DIMPLE N	
			<small>08/17/2009</small> ART UNIT 1791	PAPER NUMBER
			MAIL DATE 08/17/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/581,616

**Applicant(s)**

BERGERET, NATHALIE

**Examiner**

DIMPLE N. BODAWALA

**Art Unit**

1791

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-43, 45-53 and 56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-43, 45-51 and 56 is/are rejected.
- 7) ☒ Claim(s) 52 and 53 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/19/2009 has been entered.

***Specification***

2. The disclosure is objected to because of the following informalities:
3. Specification is objected because title of the disclosure “Supple Rigidified mould” does not match with title on Bib-data sheet “Stiffened Flexible Baking Tin”. Therefore, Applicant is advised to change the title of the disclosure as cited on Bib-data sheet.
- Appropriate correction is required.

**New Grounds of Rejections**

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 48 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 48 recites the limitation "the upper bead" in line 2. There is insufficient antecedent basis for this limitation in the claim, because claim 48 is depended on claim 38, wherein claim 38 does not cite limitation of “upper bead”, wherein such limitation makes the scope of the subject matter indeterminate.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

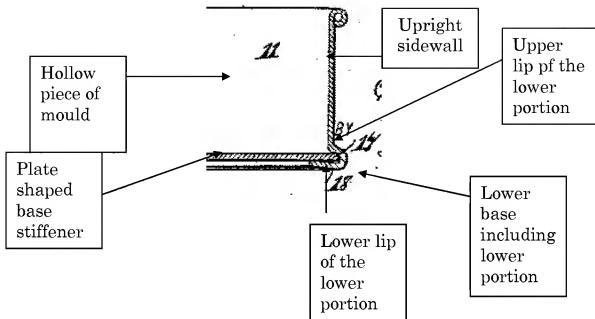
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. **Claims 38-43, 45-51 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perrottet (US 559,788) in view of either Liorente Hompanera (US 2001/0043977) or Sollich (GB 697,071).**

10. As to claim 38, Perrottet ('788) discloses baking pan which comprises a hollow piece having rigid bottom (B) as a plate shaped base stiffener, wherein hollow piece having an upright sidewall with a lower base which is connected to a lower portion of the hollow piece, wherein the lower portion comprises a lower lip holding the base (B) and defining a bottom wall of the mould, and an upper lip extending above the lower lip, defining with the lower lip a groove or channel (17) in which the plate shaped base stiffener is removably received, and pinning the plate shaped base stiffener against the lower lip (See figure 3).



11. Perrottet discloses all claimed limitations as discussed above, but fails to teach or suggest that the mold is flexible mold.

12. Liorente Hompanera ('977) discloses use of silicone for manufacturing a confectionery moulds and baking receptacle, wherein the cooking pan is made of flexible elastomeric material such as silicone, wherein silicone material is a heat curable elastomer (See paragraph # 11, 13 and 14), which is intended for application in contact with food stuff. It further involved for the operation of easily removal of the baked product from the mold (See abstract), and the operation of easily washed of mold or receptacle. Furthermore, silicone having a high flexibility which is involved to make a mold or receptacle with desire shape and size to suit user requirement (See para. # 13).

13. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Perrottet ('788) by providing a flexible elastomeric material such as silicone material for pan rather than a rigid material because such flexible elastomeric material is involved for the operation of easily removal of the baked product from the mold (See abstract), and the operation of easily washed of mold

or receptacle, further involved to make a mold or receptacle with desire shape and size to suit user requirement (See paragraph # 13), and silicone material is a heat curable elastomer (See paragraph # 11, 13 and 14), which is intended for application in contact with food stuff as suggested by Liorente Hompanera ('977).

14. Sollich discloses flexible mold which is made of rubber, wherein mold comprises bottom portion for receiving metal reinforcement member to give the desired rigidity (See page 1).

15. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Perrottet ('788) by modifying the mold with a flexible elastomeric material of Sollich because such material is a heat curable elastomer which is intended for application in contact with food stuff and other properties of material is intended for the operation of easily removal of the baked product from the mold, and the operation of easily washed of mold; and also such material is non-deformable material so the casting mold body or mold profile with rim and bottom portion both of which retain their shape during different applications.

16. As to claim 39, Perrottet further teaches that the lower base of the side wall is formed integrally with the lower lip (18) (See figure 3).

17. As to claim 40, Perrottet further teaches that the lower lip (18) is a continuous lip (See figure 3).

18. As to claim 41-43, Perrottet further teaches that the lower lip (18) is lower ring-shaped wall limited toward the center of the bottom wall (B) by a hole (17) that is covered by the plate shaped base stiffener (B) (See figure 3), wherein figure 3 shows that the lower ring shaped wall occupies more than half total surface area of the bottom wall of the mould, but fails to provide ranges as cited in claims 42-43. So, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Perrottet ('788) by optimizing range of the total surface area of the plate shaped base stiffener covered by the lower ring shaped wall, wherein such configuration

of the mould allowed the user to slide and/or clip the plate shaped base stiffener easily on the lower ring-shaped wall, and, thus, lower ring-shaped wall retains the plate shaped base stiffener during the various applications. Claimed range and the prior art range of composition are closed enough to demonstrate similar properties and be expected to have a standard results, *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985).

19. As to claims 45-47, figure 3 of Perrottet ('788) shows that the length of the extension of the lower lip from the lower base of the side wall and the length of the upper lip, but fails to provide ratio between these two lengths. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Perrottet ('788) by optimizing ratio of the length of the extension of the lower bead from the lower base of the side wall to the length of the upper bead in desired range and/or as cited in the claim, in order to define dimension of lower ring shaped wall, so the user enable to slide and/or clip the plate shaped base stiffener easily on the lower ring-shaped wall, and, thus, lower ring-shaped wall retains the plate shaped base stiffener during the various applications. It is not necessary that the prior art suggests expressly or in so many words the changes or possible improvements the inventor made but that the knowledge is clearly present. *In re Sernaker*, 217 USPQ 1 (Fed. Cir. 1983).

20. As to claim 48, Figure 3 of Perrottet ('788) shows that the upper lip is a continuous lip.

21. As to claims 49-50, Perrottet ('788) discloses mould having a lower portion which define an upper lip, wherein upper lip having a single segment but does not define upper lip having several segments. So it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Perrottet by providing different segment of an upper lip of the lower portion of the mould of Perrottet, in order to define a lower ring-shaped wall with varied thickness, which retains the plate shaped base stiffener during the various applications. It has been held that a mere change in

shape without affecting the functioning of the part would have been within the level of ordinary skill in the art, *In re Dailey et al.*, 149 USPQ 47; *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

22. As to claim 51, Perrottet discloses mould having lower ring shaped wall with uniform thickness, but fails to display lower ring shaped wall in a variation of thickness. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify dimension of the lower ring shaped wall of Perrottet by providing desired segments of the upper lip and lower lip, in order to retain the plate shaped base stiffener securely during the process. It has been held that a mere change in shape without affecting the functioning of the part would have been within the level of ordinary skill in the art, *In re Dailey et al.*, 149 USPQ 47; *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

23. As to claim 56, Figure 3 of Perrottet shows that the plate shaped base stiffener is clipped into the channel (17).

#### ***Allowable Subject Matter***

24. Claims 52-53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

25. The following is a statement of reasons for the indication of allowable subject matter: The prior arts of record fail to teach or suggest the plate shaped base stiffener having an annular step in order to approximately follow the upper surface of the lower ring-shaped wall on which it is disposed as cited in claim 52 of the instant application. None of the above references, taken alone or in combination, inter alia teaches or fairly suggests the limitation of mould as set forth in the claims of the instant application.

#### ***Response to Arguments***

26. Applicant argues that combination rejection of Richardson (US 497,606) and Liorente Hompanera (US 2001/0043977), wherein Richardson discloses a rigid mould,



and thus the plate-shaped base C is not provided to stiffen the rigid hollow piece, but rather to facilitate removal of the bread or cake from the pan, Wherein the plate-shaped base C is not pinned against the ring shaped wall B. Secondary art, Liorente Hompanera merely discloses the use of silicone in a mold for culinary preparation, which thus utilizes the flexibility of silicone as an alternative mechanism for facilitating the removal of baked good from the mold. Nothing in either reference or in any proper combination thereof would have suggested to the skilled artisan a mold in which the wall is flexible and the base is rigid. A skilled artisan considering Richardson and Hompanera would not replace the rigid hollow piece of Richardson with a flexible hollow piece made from an elastomer while retaining a rigid bottom plate. In fact, man having ordinary skill in the art would understand that, on account of the weight of the batter disposed in the mould, the wall of the Richardson pan if made of elastomer would deform, and, thus a gap would be created between the wall and a rigid bottom plate. Furthermore, the bottom plate of Richardson is not pinned by an upper lip against the lower lip, instead, the removable plate of Richardson can float in the groove on account that the lateral wall does not comprise a protruding upper lip.

27. Applicant argues that combination rejection of Maurino (US 4,045,153) and Sollich (GB 697,071), wherein Maurino discloses a one-piece flexible mold having either rigid ring (11) embedded in the mould or a rigid ring (11') disposed in a groove (20') realised in the lower end of the outer surface of the lateral wall of the mold. Secondary reference, Sollich discloses a flexible mold (1) comprising a rigid plate shaped base stiffener vulcanized at the outer surface of the bottom wall of the mould. Thus, in both references the interior of the mold is defined by a continuous single one-piece elastomeric element. On the other hand, claim 38 cites that the bottom wall of the mold is defined by both the flexible hollow piece and the plate shaped base stiffener. Furthermore, claim 38 cites that the lower lip holding a rigid plate shaped base stiffener and an upper lip extending above the lower lip, defining with the lower lip a groove in

which the stiffener is removably received, and pinning the plate shaped base stiffener against the lower lip, wherein such limitations do not teach by Maurino or Sollich.

28. Applicant further argues that combination rejection of Greene (US 5,582,389) and Sollich (GB 697,071), wherein Greene discloses a mold comprising lateral wall made in aluminum and having score line in order to be easily opened. The proposal to replace the disposable wall of the Greene mold with an elastomer as in Sollich is untenable, in that elastomer of Sollich are not intended to be either torn or thrown away. The proposal thus arises only through use of impermissible hindsight. To the contrary, the skilled artisan would understand that, on account of the weight of the batter disposed in the mould, the wall of the Greene pan if made of elastomer would deform, and, thus a gap would be created between the wall and a rigid bottom plate. Furthermore, the bottom plate of Greene is also not pinned by an upper lip against the lower lip, instead, the removable plate of Greene floats in the groove on account that the lateral wall does not comprise a protruding upper lip.

29. Applicant's all arguments with respect to claim 38 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIMPLE N. BODAWALA whose telephone number is (571)272-6455. The examiner can normally be reached on Monday - Friday at 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PHILLIP C. TUCKER can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner  
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/D. N. B./  
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